# Hearing Before the U.S. House of Representatives Committee on Oversight and Accountability

Opening Statement of IRS Supervisory Special Agent Gary Shapley July 19, 2023

## Intro & Background

Thank you for inviting me to testify here today. I want to thank every Member and staffer on both sides of the aisle for the work you do to represent your constituents and hold government accountable.

My name is Gary Shapley. I have worked as a Special Agent for the IRS Criminal Investigation (CI) for 14 years. I have risen to become a senior leader in the organization and currently supervise 12 elite agents in the International Tax and Financial Crimes (ITFC) group.

In my work, I have met directly with United States Attorneys in multiple districts and have supervised or investigated cases out of every major U.S. Attorneys Office (USAO) across the country, including the Southern and Eastern Districts of New York; the Central, Eastern, and Southern Districts of California; the Eastern District of Virginia, Washington D.C., Southern District of Florida, and many more.

I led, planned, or executed undercover operations or search warrants in more than a dozen countries. I investigated and managed some of the largest cases in the history of the agency, recovering more than \$3.5 billion for the U.S. taxpayer.

Based on this experience, I am here to tell you that the Delaware USAO and Department of Justice (DOJ) handling of the Hunter Biden tax investigation was very different from any other case in my 14 years at the IRS. In this country, we believe in the rule of law, and that applies to everyone. There should not be a two-track justice system depending on who you are and who you're connected to. Yet in this case, there was.

At every stage decisions were made that benefited the subject of the investigation. The Hunter Biden laptop was obtained and authenticated by the FBI, but it was an IRS search warrant that authorized the government to search its contents. In every other case I've ever participated in, evidence like that would be subject to a filter review for privileged communications, with all remaining information provided to investigators in its entirety. That did not happen with the Hunter Biden laptop. Instead, Assistant U.S. Attorney Lesley Wolf told us prosecutors had decided to conceal some evidence from the investigators.

The Delaware USAO slow-walked steps like conducting interviews, serving document requests, and pursuing physical search warrants in California, Virginia, and Delaware. The warrants were ready as early as April 2020, but the Delaware USAO pushed them off until after the November 2020 election and then never pursued them. After an electronic search warrant on Hunter Biden's Apple iCloud account led us to WhatsApp messages with several CEFC China Energy executives where he claimed to be sitting and discussing business with his father Joe Biden, we sought permission to follow up on the information in the messages. Prosecutors would not allow it.

Around this time, a search warrant for the guest house at the Bidens' Delaware residence was being planned. Yet, despite agreeing that there was probable cause, AUSA Wolf cited the "optics" of executing

a search warrant at President Biden's residence as the deciding factor for not allowing it to be completed. This was the decision even though she admitted there would be evidence at that location that would further the investigation. AUSA Wolf also told investigators they should not ask about President Biden during witness interviews even when the business communications of his son clearly referenced him.

When the time came to conduct the interviews and go overt with our investigation on December 8, 2020, the Biden transition team was apparently tipped off about our investigation the night before—a fact my FBI counterpart reportedly confirmed to this Committee in recent testimony. The outcome for the day of action was that only one witness spoke to the investigators. In addition, Delaware prosecutors specifically excluded Special Agent Zeigler and me from meetings with defense counsel. Prosecutors were noticeably non-transparent about those interactions. Both FBI and IRS investigators repeatedly complained about the lack of communication. These are just some of the examples of how our investigation into the Biden family finances was stymied.

What I witnessed reflects poorly on the DOJ and raises serious questions about their objectivity and ethics. However, it's important to distinguish what I know personally, what I was told, and what I do not know. I understand agents are not always privy to internal deliberations at DOJ, and that I don't know the level of communication between the Delaware USAO, DOJ Tax and other DOJ entities because we were excluded from those conversations. AUSA Wolf at times referenced how she believed one office or another at DOJ would react to our investigation. At times AUSA Wolf would invoke various DOJ offices describing how she believed something would not get approved or that someone was "sitting on" the approvals of some task we needed to complete. There is no indication she or the Delaware USAO ever attempted to get some of the actions approved to include search warrants in mid-2020 and December 2020. This is how the process was used on a recurring basis as an excuse to not do something or to slowwalk decisions.

#### Focus on Facts & Equal Treatment Under the Law—Not Politics

I am not here to support any partisan agendas on either side. I'm here because our tax system relies on the American people having confidence it is administered fairly and equally for everyone—regardless of your last name or political connections. While I understand that nothing I say will likely change your plans on how to address me today, I respectfully ask that you spend your time focusing on the facts of my testimony to ensure the American people hear more than just opinions and agendas.

I knew that by making these disclosures to Congress, I risked becoming a political football—knocked around by some on both sides who might be more interested in partisan advantage than in the facts. No matter how much I worried that individual Members of this body might unfairly attack me or mischaracterize my testimony for their own political ends, I respect this institution and its vital role in our system as a check against Executive Branch misconduct.

For me to come forward and risk my successful career to give you the information you need to do your duty, it took enormous trust that you would honor your commitment to protect whistleblowers. Some Members may use their time today to praise me for blowing the whistle because it serves their political interests in this moment. But what will they do a year from now if I'm still facing reprisals and this town has moved on to the next controversy?

Other Members may use their time today attacking me with talking points from an error-riddled letter Biden family attorneys released for that purpose, or innuendo from "opposition research" that political mercenaries are paid to circulate around events like this,

But, those are distractions.

Special Agent and I were firsthand witnesses to what happened. If the Delaware USAO's handling of this case was inappropriate, it doesn't matter whether that happened under a Republican or a Democrat Administration. Whether you agree or disagree with my concerns about the unethical slow-walking and preferential treatment in this case, I ask that you respect my sincerely-held belief that I'm doing what my conscience demands.

One thing you can be sure of is that the testimony I provide today and provided previously is true and correct to the best of my ability, because it is corroborated by documents and other witnesses.

Unfortunately, the way this has already been handled by some Members and the media has done immeasurable damage to future whistleblowers like me coming forward with information you need to know. I have been attacked as incompetent and falsely accused of being a liar, a leaker, or both. All by people who know nothing about me or the facts of this case, and never bothered to educate themselves. Indeed, some even label me "so-called whistleblower"—suggesting that my disclosures are not legally protected, merely because they don't want to hear them. It may seem like I am speaking to one side of the aisle on this point, but we have seen this shoe on the other foot before and some Republicans have made the same error, so there's plenty of blame for both sides. The cycle of villainizing or canonizing government employees who report what they believe is wrongdoing has to stop.

In the beginning, I made disclosures to the inspectors general. My counsel then contacted Congress with the expectation that you would cooperate and work together to conduct your own investigation. From the beginning, I've asked that both sides put partisanship and egos aside to examine the facts in a professional, bipartisan manner. If that was asking too much, then my trust in this body has been misplaced.

#### Why Come to Congress?

When I first started noticing deviations from the normal investigative process around June 2020, I did not run to Congress to air grievances. Instead, I documented my concerns and made internal protected disclosures to my chain of command. I tried to give the prosecutors the benefit of the doubt for a long time.

After our investigation had largely concluded by the end of 2021, the IRS recommended charging Hunter Biden with multiple felonies and several misdemeanors for the tax years of 2014-2019. The Delaware Assistant U.S. Attorney and Tax Division trial attorneys supported charging the felonies and misdemeanors listed in Exhibit 2 of my interview transcript (pages 44-45), which were officially referred to DOJ in February 2022.

Two Assistant United States Attorneys, two DOJ Tax attorneys, DOJ Tax Deputy Assistant Attorney General Stuart Goldberg and USA Weiss all assisted on this investigation since its inception, knew all of the evidence, and agreed with the prosecution of felony charges in both D.C. and the Central District of California.

As of March 16, 2023, DOJ Tax had still not provided an official approval or declination even though it was officially referred to them on February 25, 2022—over a year earlier. However, the case was presented to the D.C. USAO around March 2022.

Shortly thereafter, Attorney General Merrick Garland was asked by Senator Bill Hagerty at an April 26, 2022 hearing how the American people could be confident the Administration was conducting a serious investigation into the President's own son. AG Garland responded by saying, "Because we put the investigation in the hands of a Trump appointee..."

He led Congress to believe the case was insulated from improper political influence because all decisions were being made exclusively by Delaware U.S. Attorney David Weiss.

But that was not true.

The Justice Department allowed the President's political appointees to weigh in on whether to charge the President's son. After U.S. Attorney for D.C. Matthew Graves, appointed by President Biden, refused to bring charges, I watched Mr. Weiss tell a room full of senior FBI and IRS investigators on October 7, 2022, that he was "not the deciding person on whether charges are filed."

That was my red line.

I had seen an undeniable pattern of preferential treatment and obstruction of the normal investigative process. Now USA Weiss was privately admitting that what the American public believed, based on the Attorney General's sworn testimony, was false. I could no longer in good conscience stay silent and raised my concerns in the meeting. The result was simply that the Delaware USAO cut the IRS out of the case within two weeks.

In November 2022 the statute of limitations was set to expire for the 2014 and 2015 D.C. charges, which included the 2014 felonies for "attempt to evade or defeat tax" and "fraud or false statements" regarding Burisma income earned by Hunter Biden in those years. The statute of limitations had been extended to that point through a tolling agreement with Hunter Biden's defense counsel, and we were told they were willing to extend it past November 2022. But USA Weiss allowed those charges to expire, just as he'd said in the October 7 meeting he would because he had no way to bring the charges.

Six months after the 2014 and 2015 charges stalled after being declined by the President Biden appointed USA in D.C., prosecutors presented the 2017, 2018 and 2019 criminal tax charges to the President Biden appointed USA in the Central District of California, Martin Estrada, in or around September 2022—coinciding with USA Estrada's confirmation. In January of this year, I learned U.S. Attorney Martin Estrada had declined to bring the charges in the Central District of California.

For all intents and purposes, the case was dead, with the exception of one gun charge that could be brought in Delaware.

And yet, when Senator Chuck Grassley asked AG Garland about the case on March 1st, 2023, Garland testified: "The United States Attorney had been advised that he has full authority to make those referrals you're talking about or to bring cases in other districts if he needs to do that. He has been advised that he should get anything he needs. I have not heard anything from that office that suggests they are not able to

do anything that the U.S. Attorney wants them to do." After that October 7th red-line meeting, there was no way to reconcile Mr. Weiss's statement and his office's actions with AG Garland's public testimony.

After the DOJ's conduct could no longer be explained as coincidence, I made the difficult decision to make protected disclosures to the levels where positive change could occur. I could have stopped with blowing the whistle internally at the IRS, to my agency's Inspector General, and to the Justice Department Inspector General. I am confident the inspectors general are seriously investigating and in time will corroborate my protected disclosures. During their efforts, those offices are subject to your oversight to ensure that they do their jobs.

But, Congress has its own separate interests and investigative authorities. So, you had a right to know now that the Attorney General's testimony about the Hunter Biden investigation was false.

#### U.S. Attorney Weiss Statements and Letters

I am 100% certain of what USA Weiss's office did in seeking approval from political appointees in D.C. and California. The New York Times reports that it has independently confirmed the charges being presented and declined in California. Plenty of other witnesses are familiar with these facts in addition to those who witnessed Mr. Weiss's private admission. I encourage them to step forward and tell the truth about what happened and what they heard.

Let me be clear. Although these facts contradict AG Garland's testimony and raise serious questions for you to investigate, I have never claimed to have evidence that Mr. Garland knowingly lied to Congress. Whether AG Garland knew his testimony was false is something for you and the inspector general to determine—not me. The same is true of USA Weiss's three letters to Congress since June 7, 2023. It is for others to investigate and determine whether those letters contain knowingly false statements. However, it's clear that USA Weiss's story to the American public has evolved. He's gone from unequivocally echoing AG Garland to, just one month later, corroborating in several ways the disclosures we made about limits on his authority.

On June 7, 2023—before the transcript of my congressional interview was public—USA Weiss wrote to Chairman Jim Jordan: "[A]s the Attorney General has stated, I have been granted ultimate authority over this matter, including responsibility for deciding where, when, and whether to file charges." If he had been granted "ultimate authority" DOJ should have been able to produce some document to support this claim. Instead, when my interview transcript was released by the House Ways and Means Committee on June 22, Chairman Jordan wrote USA Weiss to ask about the obvious contradictions between my testimony and his June 7 letter.

USA Weiss's June 30, 2023 letter to Chairman Jordan wrote of the June 7 letter: "I stand by what I wrote." He then proceeded to reveal obvious contradictions, confirming exactly what I stated in my protected disclosures. First he acknowledges, "As the U.S. Attorney for the District of Delaware, my charging authority is geographically limited to my home district." Going outside of his district, he explained, required contacting the USAO for the district in question to determine whether it wants to partner on a case—hardly the "ultimate authority" to file charges "where [and] when" he decides, as he and AG Garland had led Congress to believe. The investigation supposedly "in the hands of a Trump appointee," as Mr. Garland had told Senator Hagerty, required that Mr. Weiss "partner" with U.S.

Attorneys Matthew Graves and Martin Estrada, both appointed by the father of the subject of the investigation.

USA Weiss's June 30 letter also acknowledged that if another office didn't want to partner on a case, his only path forward was to request special authority from the Attorney General to bring charges anywhere he sought. Yet this too requires seeking approval from the President's appointee in order to charge the President's son. In the June 30 letter he said he had been assured he would be granted this authority "if necessary after the above process."

Yet not until a July 7, 2023 letter to Senator Lindsey Graham did USA Weiss fully corroborate what we told the Ways and Means Committee: months before the October 7, 2022 meeting, Mr. Weiss "had discussions with Departmental officials regarding potential" special authority, "which would have allowed me to file charges in a district outside my own without the partnership of the local U.S. Attorney."

USA Weiss wrote he'd "never been denied the authority to bring charges in any jurisdiction"—but his office clearly didn't bring charges in any of the jurisdictions they had planned in February 2022, and he was unable to charge the substantive felony charges as a result. If he never requested the special authority from AG Garland that he told us on October 7 he had discussed months earlier, the American public deserves to hear why he allowed the 2014 and 2015 D.C. charges to expire. No number of carefully-worded denials and evolving half-truths can overshadow this stark fact.

USA Weiss and AG Garland will each be sitting before these Committees one day. They will have to admit that despite all their obfuscation, the absolute fact is that this case was presented to the presidentially-appointed U.S. Attorneys in Washington, D.C. and the Central District of California. That no charges were brought in those districts tells you everything you need to know.

I don't claim to be privy to Mr. Weiss and Mr. Garland's communications about special authority to charge outside of Delaware. But when Mr. Weiss told us on October 7, 2022 that he was not the deciding person, that Washington D.C. had declined to allow charges, and that if California declines to allow charges he will have to request special authorities, I understood the gravity that these admissions had on the investigation. Whether full responsibility for that lies with USA Weiss or AG Garland is for Congress, the inspectors general, and ultimately the public to decide.

## Put the Scrutiny Where it Belongs

When I decided after October 7 to come forward, I first began researching whistleblower attorneys. I wanted to ensure I abided by the law in every way as I navigated the complex taxpayer privacy and grand jury secrecy statutes. I carefully followed the whistleblower process to the letter, with the advice of counsel at every step.

I am incredibly fortunate to be represented by Mark Lytle, a federal prosecutor for 25 years, including five years with the DOJ Tax division. I'm also grateful for the representation of Empower Oversight, a non-profit whistleblower assistance group whose president, Tristan Leavitt, was previously nominated by President Biden to the Merit Systems Protection Board (MSPB) and unanimously confirmed by the U.S. Senate. While some have tried to paint me with a partisan brush because this charitable organization

employs some former staffers to GOP Members on Capitol Hill, their expertise developed working for the patron saint of whistleblowers, Senator Chuck Grassley, has been invaluable in this process.

Meanwhile, the Biden family attorneys appear to be representing Hunter Biden, President Biden and the Department of Justice, and they are not working for free. It has been reported in public sources that there is a large fund paying the legal fees of Biden family attorneys. The source of those funds is unknown. They have virtually unlimited resources to pursue their agenda, while my motives are questioned simply for finding competent representation from a small non-profit that helps whistleblowers because they believe in that cause. Currently, USA Weiss and AG Garland are using taxpayer dollars and unlimited legal resources at DOJ to fashion each word they release. Non-profit whistleblower advocate groups such as Empower Oversight and Whistleblower Aid are the only path to ensure whistleblowers like me without access to these massive budgets are heard and receive competent advice about how to follow the law while making these disclosures.

It has been around eight months since I went to the IRS inspector general and around five months since going to the Justice Department Inspectors General. It has been around three months since my counsel wrote to all the relevant committee chairs and ranking members to offer my testimony to the House and Senate. Of all the recipients of that April 19, 2023 letter and several follow-up letters, Chairman Richard Durbin and Ranking Member Jerrold Nadler are the only ones whose offices have made no attempt to my knowledge to contact me for more information. And despite my request for bi-partisan cooperation between the House and the Senate Committees, Chairman Ron Wyden and Chairman Jason Smith would not agree to a combined interview.

Chairman Wyden initially authorized my attorneys to receive information to help me prepare to make protected disclosures to the Senate as well. However, the House Ways and Means Committee committed to an interview date first. I went ahead with that process since House and Senate were unable to agree on doing a combined interview, and I had been assured House Democrats would have equal time for questioning and equal access to all the documents I provided.

After the House Ways and Means Committee released my testimony, I instructed my attorneys to reengage with the Senate Finance Committee to see if Senators might have questions not covered in the released transcript. I did this in good faith, even though a spokesperson for the Senate Finance Committee previously provided false information to the media, incorrectly claiming I had "backed out" of scheduled testimony to the "Democrat-led" Senate committee. Partisans looking to pigeonhole me before even hearing what I have to say seized on the misleading headline without noting that I had insisted the House process be bipartisan, that the Senate process was also bipartisan, or that I welcomed Senate staff to join the House interview. We are now working cooperatively to schedule something with the Senate, if necessary, after today's hearing.

It has now been around seven weeks since I provided my testimony to the House Ways and Means Committee. I understand that many governmental processes are slower than most would expect. But, to my knowledge, only Special Agent and one other witness have been questioned by Congress. The only witnesses here today are the two whistleblowers. We've already testified in private and been cross-examined by Democrats and Republicans for a combined total of around 14 hours.

Presumably, the Inspectors General have interviewed many of the key witnesses, but they are not here to testify about the scope and status of their inquiries. None of the other fact witnesses are here to testify,

and only one has testified to Congress privately. Meanwhile, Mr. Weiss and the Attorney General are using their offices and your tax dollars to put out carefully-crafted, narrow non-denials that have confused rather than clarified for the public—all without being subject to cross-examination on the facts.

My intention was not to be your sole source of information, and I implore you to take the necessary steps to obtain as much evidence as possible, from as many sources as possible, to be able to fully inform your conclusions. I am confident that after you have done that, both sides will find serious issues with the Hunter Biden investigation that closely align with my testimony and the documents I've provided.

Some people seeing only inaccurate headlines have perpetuated the false information—spreading it like wildfire. People do not have time to read 200 pages of transcribed testimony. They are busy trying to put food on the table, raising their families, and trying to figure out if and when they can retire. The public is smart but needs honest summaries of the work their government does to develop informed opinions.

Some take advantage of this and purposely spread false narratives by planting words like "disgruntled" and "self-styled whistleblower" into their messages regardless of the facts. They believe Americans are easily manipulated and misled, but I do not. No matter what your party is, I am not your opposition. I am a whistleblower here with information for you to examine through additional investigation and determine whether additional action is warranted on your part. I am on your team whether we agree on every politically sensitive issue or not.

Further, I am not disgruntled. On October 26, 2022, I received the highest performance rating as an IRS senior leader and was offered a permanent promotion as Assistant Special Agent in Charge of the Chicago Field Office. I declined the promotion because I hoped to compete for a different position at headquarters. My performance evaluation from the senior executive leading that office reads:

Gary – you started as the detailed ASAC for Branch C in December 2021. Among the 3 branches, you quickly set yourself apart as a leader among your peers. Your strong desire to seek excellence no matter the situation has provided a positive impact to our entire field office. I have enjoyed working closely with you again and look forward to watching you continue to grow as a leader!

I think you would agree that this does not sound like the evaluation of a disgruntled employee. I have dedicated my career to the mission of IRS-Criminal Investigation. I want to stay there the rest of my career. Within my agency there are many fantastic leaders who deserve the respect their title demands. There are also countless IRS-CI special agents who are second to none in the federal law enforcement world. I am proud to wear the same badge as these great leaders and great agents. I believe in the IRS-CI motto of "Honoring the Badge, Preserving the Legacy, Mastering Your Craft, and Inspiring the Future." My goal will always be to further the mission of CI.

#### Whistleblower Retaliation Must Stop

There is no benefit for me blowing the whistle on this case—absolutely none.

I have no book deal, and the only money that goes into my bank account every two weeks is from my employment for the Federal government.

I am still a Supervisory Special Agent leading a group of 12 fantastic agents working complex international investigations. Unfortunately, the senior leaders who are my immediate supervisors are currently making the mistake of retaliating against me for simply reporting outside the chain of command what I genuinely believed was wrong and could not be addressed internally.

IRS senior leadership is allowing this retaliation and possibly assisting. My direct supervisor has not spoken with me in six weeks. Suddenly, all kinds of unusual scrutiny came down on me and my agents. Someone has clearly started hunting for mistakes in our previous work on other cases.

A major initiative developed within my group that had been approved and praised by my chain of command and enthusiastically endorsed by the DOJ Tax division and a U.S. Attorneys Office before all this happened was "paused" when I blew the whistle and then mostly halted altogether. One disappointed AUSA even asked my agent if it was paused to retaliate against the agent for blowing the whistle on the Hunter Biden investigation. Killing this initiative might hurt my metrics at my next performance evaluation, which may be the point. But it will also mean that fewer tax cheats will be held accountable. Congress ought to be concerned about that.

I believed the promises of protection that induced me to blow the whistle. But from where I sit here today, the system that is supposed to protect me is very slow and very ineffective.

### Intimidation by Biden Family Lawyers

Even before Mr. Weiss told senior FBI and IRS leaders that he was not the deciding person on whether charges would be filed, Biden family attorneys attacked investigators in the pages of the Washington Post and threatened the prosecutors with "career suicide" if they brought charges against the President's son.

After my testimony was released, we received a request for a comment from a reporter claiming that Mr. Biden's attorneys had sent a letter to the Justice Department lobbying for a retaliatory criminal inquiry against me for my protected whistleblowing. The press did not share a copy of the alleged letter with us, and I still have not seen it. But, it is chilling to think that after threatening prosecutors with "career suicide," Mr. Biden's attorneys would be so bold as to actually lobby in writing for his father's Justice Department to prosecute the whistleblower who disclosed preferential treatment for the President's son.

Then one of the Biden family attorneys sent to the press a 10-page error-filled letter addressed to Chairman Smith of the House Ways and Means Committee. It attacked me with innuendo, false statements, and baseless speculation that I had leaked information to the Washington Post. As I said in my affidavit to the House Ways and Means Committee, I did not leak information to any media source.

I sent the Washington Post a letter waiving any confidentiality of any communications I might have had with any of their reporters. So, they could simply report that I was not the source. To the contrary, if I was the source, they could now report that I was the source and release the evidence, if they had any. But they have not and cannot because I told the truth in my affidavit to the House Ways and Means Committee.

Since both the Washington Post and I know I did not leak any information, they should not report on false attacks by the Biden family attorneys against me without correcting the record. All the paper will say is that it will not comment on sourcing. The American people should understand: this is an example of how you are being manipulated by false information.

I knew that coming forward to share the truth about an investigation into the President's son would not be easy. I stood to gain nothing, other than to satisfy my conscience. Making the decision to come forward once allowed me to sleep better, but being slandered and targeted by the government and the Biden family attorneys certainly has not.

I call on those senior leaders and agents at IRS-CI who know what is happening now to stand up for what they know is right because I need your support—the emails and messages I have received so far have helped me more than you know.

I hope Congress will treat my testimony responsibly and fairly, and do its due diligence to hear from other necessary witnesses. I hope the Office of Special Counsel and the inspectors general will step up to better protect me and my team. But if I can't count on either of those, at least I know the American people who listen to me will understand why I had to blow the whistle.

To the American people who this body works for I implore you to look at the facts, not agenda-laced statements from either side of the aisle. I am the average American citizen who worries about how I will send my kids to college and if I will ever have enough money to retire, just like most people watching this.

I am the first person in my family to go to college. It was not an Ivy League school, and I don't have a network of rich and powerful friends to help me weather the storms of retaliation and character assassination raging on me for doing the right thing. I am putting myself at risk for the American people who support me **and for those who do not**. At the end of the day I am just a small town kid from Norwich, New York who worked hard to get where I am and will never compromise my integrity. I will never forget who I am, where I come from, or all the people in my life who have made me who I am today. Thank you all for your time.